

(16)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CAMP AT NAGPUR

Original application No. 227/89

Shri J.R. Sood,
Chief Permanent Way Inspector,
South Eastern Railway,
Nagpur.

... Applicant.

V/s.

1. Union of India
through the General Manager,
S.E. Railway Garden Reach,
Calcutta.
2. Chief Engineer,
S.E. Railway,
Garden Reach,
Calcutta.
3. Senior Divisional Engineer
S.E. Railway,
Nagpur.

.... Respondents.

CORAM: Hon'ble Shri Justice U.C. Srivastava, Vice Chairman.
Hon'ble Shri P.S. Chaudhuri, Member (A)

Appearance:

Applicant in person.

Respondents by Mr. P.N.
Chandurkar.

JUDGEMENT

Dated: 13.9.1991

¶ Per Shri P.S. Chaudhuri, Member (A) ¶

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 23.3.1989. In it the applicant, who was working as Chief Permanent Way Inspector, Kamptee, Nagpur, is challenging the order dated 28.12.1988 by which in exercise of powers conferred by Rule 2046 (k) of the Indian Railway Establishment Code, Volume II, on attaining 30 years service qualifying for pension he has been given three months notice of being retired from service. He has subsequently also

challenged the appellate order thereon dated 6.10.1989.

2. The facts necessary for deciding this case are few. By letter dated 17.9.1956 the applicant was appointed as App/rentice Permanent Way Inspector. He joined this post on 6.10.1956. After intermediate promotions/postings he joined his present post on 8.9.86. By the impugned order dated 28.12.88 the applicant was given three months notice of being retired from service. On 23.1.1989 he submitted a representation against this retirement. By letter dated 6.10.1989 the applicant was informed that the Re - Review Committee comprising of Chief Track Engineer(M), Chief Freight Traffic Superintendent (I & S) and Deputy Chief Personnel Officer (HQ) agreed with the decision of the Divisional Review Committee to retire him from service under the above mentioned Rule 2046 (k) . In the meantime, he had already filed the present application seeking quashing of the impugned order dated 28.12.1988. Thereafter, he also sought the quashing of the order dated 6.10.1989.

3. The respondents have opposed the application by filing their written statement. We have heard the applicant in person and Mr. P.N. Chandurkar, learned Counsel for the respondents.

4. The applicant bases his case on three submissions. The first is that the impugned order is not an order simpliciter ordered in the public interest but has been passed mala fide as a subterfuge to get around the various disciplinary

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proceedings and investigations pending against the applicant which would have revealed irregularities committed by the third respondent. This has been denied by the respondents who submit that the case of the applicant was referred to a Committee known as the Review Committee. The said Committee after perusal of his annual Confidential reports for the previous 5 years advised and recommended that the applicant was not fit for further retention in service. Thereafter, the appointing authority passed the impugned order. It is true that there are disciplinary proceedings pending against the applicant. On the face of it, the impugned order is an order simpliciter which casts no stigma on the applicant. In view of the final order that we propose passing we do not say anything more on this submission.

5. The applicant's second submission was that the impugned order was passed by the Senior Divisional Engineer, whereas the order dated 17.9.1956 by which he was initially appointed was issued on behalf of the Chief Engineer and that this fact makes the Chief Engineer his appointing authority. A perusal of the said order dated 17.9.1956 makes it clear that it was signed and issued by " P.A. to Chief Engineer " as the appointing authority. It is merely the copy of this order that was sent to the official under whom the applicant was posted that was issued on behalf of the Chief Engineer. But this does not make the Chief Engineer his appointing authority. The appointment letter clearly states that the appointing

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authority is " P.A. to Chief Engineer". It is the agreed position that PA to Chief Engineer is a Senior Scale Officer and so is lower in rank than the Senior Divisional Engineer, who is a Junior Administrative Grade Officer, who signed the impugned order. The other limb of the applicant's argument on this point was that his promotion to his present grade of Chief Permanent Way Inspector in the scale of pay of Rs. 840 - 1040 (Rs) had been made with the approval of the Chief Track Engineer and so the Chief Track Engineer should be deemed to be his appointing authority. The respondents contended that Rule 2046 (k) makes it clear that the order of premature retirement passed under its provisions can be passed by the authority competent to make appointments against the post held by the employee concerned and that Junior Administrative Grade Officers, which is the grade in which the Senior Divisional Engineer is, have been delegated powers to make appointments to the post in which the applicant working when he was retired. Against this background and in view of the final order we propose passing, say nothing more on this submission of the applicant.

6. The applicant's final submission was that his representation against the impugned order dated 28.12.1988 had not been considered by the competent authority. He submitted that the circular dated 23.11.1983 laid down the following procedure for dealing with representations against premature retirement:

" (vi) Review for consideration of representations.

i) An employee, who has been served with a notice/order or premature retirement under Rule 2046 -R II, may prefer appeal, representation within three weeks of service of such notice/order. The Administration should constitute the Second Review Committee within two weeks of the receipt thereof, at Headquarters level. The findings of the Second Review Committee to uphold the compulsory retirement of the employee, should be put up to GM for decision and in the event of GM agreeing to the recommendations of the said Re -Review Committee, the case should be referred to Board with complete relevant papers (together with GM's decision) for final orders. "

The applicant went on to contend that the letter dated 6.10.1989 made it clear that his representation had not even been considered even by the General Manager, let alone the Railway Board, but had only been considered by a Re -Review Committee. Faced with this predicament, the respondents sought an adjournment to re-check whether this was the latest instruction. They then produced the Railway Board's letter dated 17.10.1989, circulated under the Chief Personnel Officer's letter dated 13.12.89 and the Divisional Personnel Officer, Nagpur's letter dated 28.2.90, the relevant portion of which reads as under :

" The Board have very carefully considered the suggestion received from the Railways that in appeal cases the final decision should stop at the General Manager's level, in consultation with the Deptt. of Personnel, the nodal Ministry for this purpose. Since, the guidelines for compulsory retirement prescribed by the nodal Ministry are commonly

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applicable throughout the Central Government and in all other Ministries/Departments the concerned Secretary to the Government is expected to finally decide the cases, the Board have not found it feasible to leave the appeal cases to be decided at the G.M's level, in cases where the appeals are rejected. "

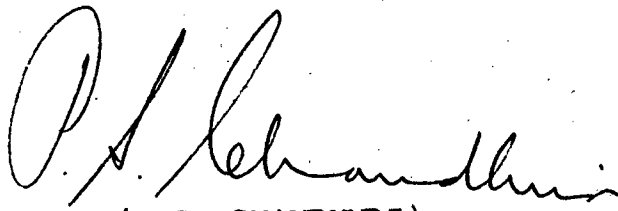
Against this background we have no difficulty in holding that the applicant's representation was not considered by the only authority competent to do so viz., the Railway Board, but has been rejected at a much lower level. We have, therefore, no difficulty in holding that the order dated 6.10.1989 rejecting the applicant's representation being without jurisdiction is illegal and void ab initio.

7. In this view of the matter, we are of the opinion that the application partly succeeds inasmuch as the impugned order dated 6.10.1989 deserves to be quashed and set aside.

8. We accordingly quash and set aside the order dated 6.10.1989 and the consideration of the applicant's representation dated 23.1.1989 on which it is based. The applicant is permitted to submit a fresh representation within a period of one month from the date of receipt of a copy of this order and the respondents are directed to consider it and pass final orders thereon in accordance with law within a period of two months from the date of receipt of



the fresh representation, if any. If the applicant continues to remain aggrieved after such final orders are passed, he is at liberty to approach the Tribunal afresh. In the circumstances of the case, there will be no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)



(U.C. SRIVASTAVA)
VICE CHAIRMAN

13-9-1991